

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DEVON TIPTON

PLAINTIFF

VERSUS

CIVIL NO. 1:15cv5-HSO-JCG

**CAROLYN W. COLVIN,
Commissioner of Social Security**

DEFENDANT

**ORDER ADOPTING MAGISTRATE JUDGE'S [18] REPORT AND
RECOMMENDATION, AND GRANTING DEFENDANT'S MOTION [16] TO
REMAND PURSUANT TO SENTENCE FOUR OF 42 U.S.C. § 405(g)**

This matter comes before the Court on the Report and Recommendation [18] of United States Magistrate Judge John C. Gargiulo, entered in this case on October 26, 2015. After due consideration of the Report and Recommendation [18], Defendant's Motion [16] to Remand Pursuant to Sentence Four of 42 U.S.C. § 405(g) [16], the record, and all relevant legal authorities, the Court finds that the Magistrate Judge's Report and Recommendation [18] should be adopted, that Defendant's Motion [16] to Remand should be granted, and that Plaintiff's Complaint [1] should be remanded to the Commissioner of Social Security for further administrative proceedings.

I. BACKGROUND

Plaintiff Devon Tipton's ["Plaintiff"] Complaint [1] in this case appears to seek "reversal of an administrative decision which denied Plaintiff a period of disability, disability insurance benefits, and supplementary security income benefits under Titles II and XVI." Mem. in Supp. of Mot. to Remand [17] at 1.

On September 3, 2015, Defendant filed her Answer [14]. On October 1, 2015, Defendant Carolyn Colvin, Acting Commissioner of the Social Security Administration (“Commissioner”), filed a Motion [16] to Remand Pursuant to Sentence Four of 42 U.S.C. § 405(g) [18]. Plaintiff did not file a response to the Motion [16] to Remand. On October 26, 2015, United States Magistrate Judge John C. Gargiulo entered a Report and Recommendation [18], recommending that this case be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), and that on remand:

this case be sent to an Administrative Law Judge (ALJ) for a supplemental hearing and a new decision on other issues, and that the ALJ will (1) obtain supplemental evidence from a vocational expert to address the issue of transferability of skills and to clarify the effect of the assessed limitations on the occupational base and (2) otherwise develop the administrative record as appropriate and necessary.

R. & R. [18] at 2.

A copy of the Report and Recommendation was sent to Plaintiff at Plaintiff’s last known address by certified mail, return receipt requested. Plaintiff acknowledged receipt of said correspondence on October 30, 2015. Acknowledgment [19]. To date, no objection to the Report and Recommendation has been filed.

II. DISCUSSION

Where no party has objected to a magistrate judge’s proposed findings of fact and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. §636(b)(1) (“a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection

is made”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge’s findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. For the foregoing reasons, the Court will adopt the Magistrate Judge’s Report and Recommendation [18] as the opinion of this Court and remand Plaintiff’s case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). On remand, the case shall be sent to an Administrative Law Judge (ALJ) for a supplemental hearing and a new decision on other issues, and the ALJ will (1) obtain supplemental evidence from a vocational expert to address the issue of transferability of skills and to clarify the effect of the assessed limitations on the occupational base, and (2) otherwise develop the administrative record as appropriate and necessary.

III. CONCLUSION

For the reasons stated herein, the Court concludes that the Magistrate Judge’s Report and Recommendation [18] should be adopted as the finding of this Court. The Commissioner’s Motion for Remand [16] will be granted, and Plaintiff’s case will be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g).

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Magistrate Judge’s Report and Recommendation [18], entered in this case on October 26, 2015,

is **ADOPTED** as the finding of this Court, and the Commissioner's Motion for Remand [16] is **GRANTED**. On remand, the case shall be sent to an Administrative Law Judge (ALJ) for a supplemental hearing and a new decision on other issues, and the ALJ will (1) obtain supplemental evidence from a vocational expert to address the issue of transferability of skills and to clarify the effect of the assessed limitations on the occupational base, and (2) otherwise develop the administrative record as appropriate and necessary. A separate judgment will be entered in accordance with this Order, as required by Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED AND ADJUDGED, this the 23rd day of November, 2015.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE